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Criminal accountability of United Nations officials and experts on mission

Report of the Sixth Committee

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I. Introduction

1. The item entitled "Criminal accountability of United Nations officials and experts on mission" was included in the provisional agenda of the seventy-first session of the General Assembly pursuant to Assembly resolution 70/114 of 14 December 2015.

2. At its 2nd plenary meeting, on 16 September 2016, the General Assembly, on the recommendation of the General Committee, decided to include the item in its agenda and to allocate it to the Sixth Committee.

3. The Sixth Committee considered the item at its 8th, 9th and 33rd meetings, on 7 October and on 11 November 2016. The views of the representatives who spoke during the Committee's consideration of the item are reflected in the relevant summary records.[1]

4. For its consideration of the item, the Committee had before it the report of the Secretary-General (A/71/167).

II. Consideration of draft resolution A/C.6/71/L.25

5. At the 33rd meeting, on 11 November, the representative of Pakistan, on behalf of the Bureau, introduced a draft resolution entitled "Criminal accountability of United Nations officials and experts on mission" (A/C.6/71/L.25).

6. At the same meeting, the Committee adopted draft resolution A/C.6/71/L.25 without a vote (see para. 7).

[1] A/C.6/71/SR.8, A/C.6/71/SR.9 and A/C.6/71/SR.33.

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III. Recommendation of the Sixth Committee

7. The Sixth Committee recommends to the General Assembly the adoption of the following draft resolution:

Criminal accountability of United Nations officials and experts on mission

The General Assembly,

Recalling its resolution 59/281 of 29 March 2005, in which it endorsed the recommendation of the Special Committee on Peacekeeping Operations that the Secretary-General make available to the United Nations membership a comprehensive report on the issue of sexual exploitation and abuse in United Nations peacekeeping operations,[1]

Recalling also that the Secretary-General, on 24 March 2005, transmitted to the President of the General Assembly a report of his Adviser concerning sexual exploitation and abuse by United Nations peacekeeping personnel,[2]

Recalling further its resolution 59/300 of 22 June 2005, in which it endorsed the recommendation of the Special Committee that a group of legal experts be established to provide advice on the best way to proceed so as to ensure that the original intent of the Charter of the United Nations can be achieved, namely, that United Nations staff and experts on mission would never be effectively exempt from the consequences of criminal acts committed at their duty station, nor unjustly penalized, without due process,[3]

Underlining the importance of a zero-tolerance policy for misconduct and the commission of crimes by United Nations officials and experts on mission,

Recognizing the valuable contribution of United Nations officials and experts on mission towards the fulfilment of the purposes and principles of the Charter,

Reaffirming the need to promote and ensure respect for the principles and rules of international law,

Reaffirming also that the present resolution is without prejudice to the privileges and immunities of United Nations officials and experts on mission and the United Nations under international law,

Reaffirming further the obligation of United Nations officials and experts on mission to respect the national laws of the host State, as well as the right of the host State to exercise, where applicable, its criminal jurisdiction, in accordance with the relevant rules of international law and agreements governing operations of United Nations missions,

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[1] *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 19* (A/59/19/Rev.1), part one, chap. III, sect. D, para. 56.

[2] See A/59/710.

[3] *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 19* (A/59/19/Rev.1), part two, chap. II, sect. N, para. 40 (a).

Underlining the importance of appropriate training of United Nations officials and experts on mission to prevent any criminal conduct,

Deeply concerned by reports of criminal conduct, and conscious that such conduct, if not investigated and, as appropriate, prosecuted, would create the negative impression that United Nations officials and experts on mission operate with impunity,

Reaffirming the need to ensure that all United Nations officials and experts on mission function in a manner that preserves the image, credibility, impartiality and integrity of the United Nations,

Emphasizing that crimes committed by such persons are unacceptable and have a detrimental effect on the fulfilment of the mandate of the United Nations, in particular with respect to the relations between the United Nations and the local population in the host country,

Conscious of the importance of protecting the rights of victims of criminal conduct, as well as of ensuring adequate protection for witnesses, and recalling the adoption of its resolution 62/214 of 21 December 2007 on the United Nations Comprehensive Strategy on Assistance and Support to Victims of Sexual Exploitation and Abuse by United Nations Staff and Related Personnel,

Emphasizing that genuine accountability rests on the cooperation of the Member States,

Emphasizing also the need to enhance international cooperation to ensure the criminal accountability of United Nations officials and experts on mission,

Taking note of the report of the High-level Independent Panel on Peace Operations on uniting our strengths for peace: politics, partnership and people,[4] and of the subsequent report of the Secretary-General entitled "The future of United Nations peace operations: implementation of the recommendations of the High-level Independent Panel on Peace Operations",[5]

Taking note also of the report of the Joint Inspection Unit on fraud prevention, detection and response in United Nations system organizations,[6] the Anti-Fraud and Anti-Corruption Framework of the United Nations Secretariat of September 2016[7] and the report of the Secretary-General on his practice in disciplinary matters and cases of possible criminal behaviour for the period from 1 July 2015 to 30 June 2016,[8]

Recalling its resolution 61/29 of 4 December 2006, by which it established the Ad Hoc Committee on criminal accountability of United Nations officials and experts on mission,

Having considered at its previous sessions the report of the Group of Legal Experts established by the Secretary-General pursuant to its resolution 59/300[9] and

[4] See A/70/95-S/2015/446.
[5] A/70/357-S/2015/682.
[6] JIU/REP/2016/4.
[7] ST/IC/2016/25, annex.
[8] A/71/186.
[9] A/60/980.

the reports of the Ad Hoc Committee,[10] as well as the note by the Secretariat[11] and the reports of the Secretary-General[12] on criminal accountability of United Nations officials and experts on mission,

Recalling its resolutions 62/63 of 6 December 2007, 63/119 of 11 December 2008, 64/110 of 16 December 2009, 65/20 of 6 December 2010, 66/93 of 9 December 2011, 67/88 of 14 December 2012, 68/105 of 16 December 2013, 69/114 of 10 December 2014 and 70/114 of 14 December 2015,

Recalling also its decision that, bearing in mind its resolutions 62/63 and 70/114, the consideration of the report of the Group of Legal Experts, in particular its legal aspects, taking into account the views of Member States and also noting the inputs by the Secretariat, would be continued during its seventy-third session in the framework of a working group of the Sixth Committee,

Convinced of the continuing need for the United Nations and its Member States to urgently take strong and effective steps to ensure the criminal accountability of United Nations officials and experts on mission in the interest of justice,

1. *Takes note* of the report of the Secretary-General, in particular annex II thereto providing additional information on the nature of the allegations and information received from States on all referrals since 1 July 2007;[13]

2. *Also takes note* of the reports of the Secretary-General on special measures for protection from sexual exploitation and sexual abuse,[14] as well as the findings of the Office of Internal Oversight Services of the Secretariat in its evaluation report of 15 May 2015, including on the issue of underreporting;[15]

3. *Welcomes* the commitment of the Secretary-General to refer credible allegations of sexual exploitation and abuse to the Member State of the United Nations officials or experts on mission for appropriate action;

4. *Also welcomes* the appointment of the Special Coordinator on Improving the United Nations Response to Sexual Exploitation and Abuse, and requests the Secretary-General to regularly update Member States on progress with respect to the implementation of the mandate of the Special Coordinator;

5. *Expresses its concern* with respect to all alleged crimes on the part of United Nations officials and experts on mission, including allegations of fraud, corruption and other financial crimes, and in that regard welcomes the reaffirmation by the Secretary-General that there will be no tolerance for any corruption at the United Nations;

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[10] *Official Records of the General Assembly, Sixty-second Session, Supplement No. 54* (A/62/54); and ibid., *Sixty-third Session, Supplement No. 54* (A/63/54).

[11] A/62/329.

[12] A/63/260 and Add.1, A/64/183 and Add.1, A/65/185, A/66/174 and Add.1, A/67/213, A/68/173, A/69/210 and A/70/208.

[13] A/71/167.

[14] A/70/729 and A/71/97.

[15] "Evaluation of the enforcement and remedial assistance efforts for sexual exploitation and abuse by the United Nations and related personnel in peacekeeping operations", as reissued on 12 June 2015.

6. *Urges* the Secretary-General to continue to ensure that his zero-tolerance policy for criminal activities, such as sexual exploitation and abuse, fraud and corruption, is made known to all United Nations officials and experts on mission at all levels, especially those in managerial positions, and is fully implemented in a coherent and coordinated manner throughout the United Nations, including funds and programmes, and calls upon all entities in the United Nations to inform and to cooperate fully with the Office of Legal Affairs of the Secretariat in all cases involving allegations that a crime may have been committed by United Nations officials and experts on mission;

7. *Expresses its concern* with respect to the low rate of response from States to referred allegations, as requested in its resolution 70/114;

8. *Strongly urges* States to take all appropriate measures to ensure that crimes by United Nations officials and experts on mission do not go unpunished and that the perpetrators of such crimes are brought to justice, without prejudice to the privileges and immunities of such persons and the United Nations under international law, and in accordance with international human rights standards, including due process;

9. *Strongly urges* all States to consider establishing, to the extent that they have not yet done so, jurisdiction over crimes, particularly those of a serious nature, as known in their existing national criminal laws, committed by their nationals while serving as United Nations officials or experts on mission, at least where the conduct as defined in the law of the State establishing jurisdiction also constitutes a crime under the laws of the host State, and, further, urges States and appropriate international organizations to provide technical and other appropriate assistance in developing such legal measures to States requesting such support;

10. *Encourages* all States and the United Nations to cooperate with each other in the exchange of information and in facilitating the conduct of investigations and, as appropriate, the prosecution of United Nations officials and experts on mission who are alleged to have committed crimes of a serious nature, in accordance with their national law and applicable United Nations rules and regulations, fully respecting due process rights, as well as to consider strengthening the capacities of their national authorities to investigate and prosecute such crimes;

11. *Encourages* all States:

(a) To afford each other assistance in connection with criminal investigations or criminal or extradition proceedings in respect of crimes of a serious nature committed by United Nations officials and experts on mission, including assistance in obtaining evidence at their disposal, in accordance with their national law or any treaties or other arrangements on extradition and mutual legal assistance that may exist between them;

(b) In accordance with their national law, to explore ways and means of facilitating the possible use of information and material obtained from the United Nations for purposes of criminal proceedings initiated in their territory for the prosecution of crimes of a serious nature committed by United Nations officials and experts on mission, bearing in mind due process considerations;

(c) In accordance with their national law, to provide effective protection for victims of, witnesses to and others who provide information in relation to crimes of a serious nature alleged to have been committed by United Nations officials and experts on mission and to facilitate access of victims to victim assistance programmes, without prejudice to the rights of the alleged offender, including those relating to due process;

(d) In accordance with their national law, to explore ways and means of responding adequately to requests by host States for support and assistance in order to enhance their capacity to conduct effective investigations in respect of crimes of a serious nature alleged to have been committed by United Nations officials and experts on mission;

12. *Requests* the Secretariat to continue to ensure that requests to Member States seeking personnel to serve as experts on mission make States aware of the expectation that persons who serve in that capacity should meet high standards in their conduct and behaviour and be aware that certain conduct may amount to a crime for which they may be held accountable, and also requests that the Secretariat take all appropriate measures to continue to ensure that all such personnel, as well as United Nations officials, are properly vetted by the States contributing personnel and by the Organization for any prior misconduct while serving with the United Nations;

13. *Urges* the Secretary-General to make Member States contributing personnel to serve as experts on mission aware of the necessity of providing appropriate conduct-related training prior to deployment, and also urges the Secretary-General to continue to take such practical measures as are within his authority to strengthen existing training on United Nations standards of conduct, including through predeployment and in-mission induction training for United Nations officials and experts on mission;

14. *Reiterates* its decision that, bearing in mind its resolutions 62/63 and 63/119, the consideration of the report of the Group of Legal Experts,[9] in particular its legal aspects, taking into account the views of Member States and also noting the inputs by the Secretariat, shall be continued during its seventy-third session in the framework of a working group of the Sixth Committee, and, for that purpose, invites further comments from Member States on that report, including on the question of future action;

15. *Takes note* of the briefings by the Secretariat during the seventieth and seventy-first sessions, and decides to organize another briefing at the seventy-second session with a view to furthering discussion on measures that could be taken to help ensure the accountability of United Nations officials and experts on mission and prevent future crimes;

16. *Recognizes* the efforts of Member States towards devising concrete proposals to ensure the accountability of United Nations officials and experts on mission, and encourages all Member States to redouble their efforts informally during the intersessional period, with the support of the Secretariat, in particular through the organization of informal briefings;

17. *Requests* the Secretary-General to bring credible allegations that reveal that a crime may have been committed by United Nations officials or experts on

mission to the attention of the States against whose nationals such allegations are made and to request from those States updates, as set out in paragraph 19 below, on the status of their efforts to investigate and, as appropriate, prosecute crimes of a serious nature, as well as the types of appropriate assistance that States may wish to receive from the Secretariat for the purposes of such investigations and prosecutions;

18. *Also requests* the Secretary-General to seek, from all States that have notified the United Nations with respect to investigations or prosecutions of crimes allegedly committed by United Nations officials or experts on mission, updates on the status of their investigations or prosecutions, provided that this would not prejudice national investigations or national proceedings;

19. *Urges* the States referred to in paragraphs 17 and 18 above to provide to the Secretary-General periodic updates on their handling of the allegations, in particular informing the Secretary-General of whether any disciplinary or criminal proceedings have been brought and of the outcome of any such proceedings or the reasons for not initiating them, provided that this would not be contrary to national laws or prejudice national investigations or national proceedings, and requests the Secretary-General to continue and undertake the necessary follow-up with the States concerned, with a view to encouraging those States to respond;

20. *Requests* the United Nations, when its investigations into allegations suggest that crimes of a serious nature may have been committed by United Nations officials or experts on mission, to consider any appropriate measures that may facilitate the possible use of information and material for purposes of criminal proceedings initiated by States, bearing in mind due process considerations;

21. *Encourages* the United Nations, when allegations against United Nations officials or experts on mission are determined by a United Nations administrative investigation to be unfounded, to take appropriate measures, in the interests of the Organization, to restore the credibility and the reputation of such officials and experts on mission;

22. *Urges* the United Nations to continue cooperating with States exercising jurisdiction in order to provide them, within the framework of the relevant rules of international law and agreements governing activities of the United Nations, with information and material for purposes of criminal proceedings initiated by States;

23. *Underlines* the importance of a culture in which individuals are encouraged and supported by the Organization to report alleged crimes, emphasizes that the United Nations, in accordance with the applicable rules of the Organization, should take no action that would retaliate against or intimidate United Nations officials and experts on mission who report allegations concerning crimes of a serious nature committed by United Nations officials and experts on mission, and stresses the need for appropriate safeguards against retaliation;

24. *Takes note with appreciation* of the information provided by Governments in response to its resolutions 62/63, 63/119, 64/110, 65/20, 66/93, 67/88, 68/105, 69/114 and 70/114, and urges Governments to continue taking the measures necessary for the implementation of those resolutions, including their provisions addressing the establishment of jurisdiction over crimes, particularly those of a serious nature, as known in their existing national criminal laws,

committed by their nationals while serving as United Nations officials or experts on mission, as well as cooperation among States, and to provide specific details thereon, in particular with respect to paragraph 9 above, in the information provided to the Secretary-General;

25. *Recalls its request* in resolution 70/114 for Governments to provide specific details on the measures taken, as necessary, for the implementation of its resolutions 62/63, 63/119, 64/110, 65/20, 66/93, 67/88, 68/105 and 69/114, and notes that, in response to those resolutions, 108 submissions were received from 58 Member States between 6 December 2007 and 20 July 2016;

26. *Requests* the Secretary-General to prepare and keep updated a report containing a compilation and a summary table of national provisions, based on information received from Member States since 2007, regarding the establishment of jurisdiction over their nationals whenever they serve as United Nations officials or experts on mission, in relation to crimes as known in their existing national criminal laws, particularly those of a serious nature, and in this regard takes note of the questionnaire distributed by the Secretariat to all Member States to assist in this process;

27. *Also requests* the Secretary-General to submit a report setting out all relevant existing United Nations policies and procedures of the United Nations system regarding the allegations referred to in paragraphs 17 and 18 above;

28. *Reiterates its request* to the Secretary-General to report to the General Assembly at its seventy-second session on the implementation of the present resolution, in particular with respect to paragraphs 9, 11, 12, 14, 17 and 19 above, as well as any practical problems in its implementation, on the basis of information received from Governments and the Secretariat;

29. *Requests* the Secretary-General to continue to improve reporting methods and expand the scope of reporting, by providing information on the allegations referred to in paragraphs 17 and 18 above as well as information received pursuant to paragraph 19 since 1 July 2007, limited to the United Nations entity involved, the year of referral, the dates of follow-up requests from the Secretary-General, information about the type of crime and summary of allegations, status of investigations, prosecutorial and disciplinary actions taken, including with respect to individuals concerned who have left the duty mission or the service of the United Nations, any requests for waivers of immunity, as applicable, and information on jurisdictional, evidentiary or other obstacles to prosecution, while protecting the privacy of the victims as well as respecting the privacy and rights of those subject to the allegations;

30. *Decides* to include in the provisional agenda of its seventy-second session the item entitled "Criminal accountability of United Nations officials and experts on mission".